

ORDINANCE NO. 2019-²⁷-CM
AMENDING THE TIPPECANOE COUNTY CODE CONCERNING
HAZARDOUS MATERIALS RESPONSE TEAM

WHEREAS, the Board of Commissioners adopted Resolution 98-31-CM and Ordinance 96-30-CM concerning the Hazardous Materials Response Team which were codified at County Code sections 31.085 and 31.086; and

WHEREAS, these materials are more properly located in Chapter 32 of the County Code with other matters concerning the County Emergency Management Agency; and

WHEREAS, the provisions concerning the Hazardous Materials Response Team should be revised to reflect that the director of the Emergency Management Agency may appoint someone other than the deputy director of the Emergency Management Agency as the Coordinator of the Hazardous Materials Response Team; and

WHEREAS, the provisions concerning the Hazardous Materials Response Team should be reorganized and should be amended to more accurately reflect the scope of materials addressed by the Response Team, the costs of such response, and the statutory authority to recover reasonable and necessary expenses from responsible parties;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Tippecanoe County, Indiana, that the Tippecanoe County Code Sections 31.085 and 31.086 be **REPEALED** and recodified and added as **NEW** sections 32.50 and 32.51 reading as follows:

HAZARDOUS MATERIALS RESPONSE TEAM

Section 32.50 COMPOSITION; PURPOSE.

(A) There shall be a Tippecanoe County Hazardous Materials Response Team overseen by the Department of Emergency Management. The Director of Emergency Management or the Director's designee shall be the Coordinator of the Hazardous Materials Response Team. The Director's designee, if any, must be an employee of the Department of Emergency Management. The mission and purpose of the Hazardous Materials Coordinator shall be to advise the Emergency Management Director in establishing and implementing overall guidelines, standard operating procedures and policies regarding the operation of the Hazardous Materials Response Team.

(B) The Hazardous Materials Response Team shall consist of individuals who have volunteered for membership on the Response Team subject to appointment by the Coordinator and, if the Coordinator is a designee, the approval of the Emergency Management Director. The individuals appointed to the Response Team must have expertise, knowledge, and interest in responding to emergencies created by dangerous, hazardous or toxic materials; as well as in substance storage, handling, use, transportation, and disposal issues in the county. Members of the Response Team shall serve at the pleasure of the Director of Emergency Management.

(C) The volunteers on the Response Team shall not receive compensation from the County for their volunteer work as part of the Response Team. However, it is the intent of the County that, while responding to dangerous, hazardous, or toxic materials incidents, that volunteers on the Response Team be regarded as employees for purposes of general liability or

equivalent insurance coverage in effect for the County. This provision is not intended to create a private right of action for any volunteer or third party nor is it intended for the benefit of any third party.

(D) The Director or designee shall be compensated as employees of the County, and the Director or designee's duties with respect to the Response Team shall be regarded as duties within the scope of their employment. Employees of other agencies may assist the efforts of the Response Team as part of their employment with such agency. When they do so, they shall be regarded as employees of their respective agencies.

(E) Notwithstanding any other provision in this section and without limitation, the Department of Emergency Management may seek to recover from responsible parties under Section 32.51 the reasonable and necessary costs associated with Hazardous Materials response work performed by the Director, the Director's designee, volunteers, or employees of other agencies all of whom shall be regarded as "members" of the Hazardous Materials Response Team under Section 32.51(C)(2).

(F) The Hazardous Materials Response Team shall respond to emergencies involving dangerous, hazardous, flammable, combustible, radiological, corrosive, or toxic materials, including emergencies involving storage, handling, transportation, use and disposal of such substances. The Coordinator of the Hazardous Materials Response Team shall be responsible for supervision and management of the Response Team activities. The Team shall be "called out" by the Coordinator of the Hazardous Materials Team, or the Coordinator's designee as need may arise. At the scene of any incident, the Coordinator or designee shall be responsible for the activities of the Team and shall direct and otherwise supervise its members.

(G) The Emergency Management Advisory Council established under §32.15 shall advise the Board of Commissioners regarding the guidelines and policies to be adopted, and after adoption, the operation and effectiveness of the Hazardous Materials Response Team in controlling damage and injury from the transportation, handling, use, storage or disposal of dangerous, hazardous or toxic materials and substances in the county.

(H) The immunity provisions of IC 34-13-3-3 shall apply to the Hazardous Materials Response Team to the fullest extent permitted by law.

SECTION 32.51 SYSTEM OF REIMBURSEMENT FOR COSTS AND EXPENSES ASSOCIATED WITH HAZARDOUS MATERIALS RESPONSE TEAM.

(A) Definitions. For the purpose of this section the following definitions shall apply unless the context clearly indicates or requires a different meaning:

(1) PERSON. As used in this section, "person" means an individual, partnership, cooperative, firm, company, corporation, association, trust, estate, government entity, or any other legal entity or their legal representatives, agents, or assigns.

(2) RESPONSE. As used in this section, "response" means any and all instances when one or more members of the Hazardous Materials Response Team are called out to the scene of an incident involving the presence or suspected presence of dangerous, hazardous, or toxic substances.

(3) RESPONSIBLE PARTY. As used in this section, the “responsible party” means a person liable under subsection (B)(1) for reimbursement for costs and expenses associated with operation of the Hazardous Materials Response Team.

(4) SUBSTANCES CONSIDERED AS DANGEROUS, HAZARDOUS OR TOXIC. The following substances shall be regarded as dangerous, hazardous, or toxic for purposes of this section:

- (a) Substances listed in the latest edition of the U.S. Department of Transportation Guidebook for Hazardous Material Incidents; or
- (b) Substances listed in the latest edition of Dangerous Properties of Industrial Materials by H. Irving Sax and contain the terms dangerous, hazardous or toxic in the THR (Summary Toxicity Statement), or the Acute Toxicity Statement; or
- (c) Substances listed in the latest edition of the Condensed Chemical Dictionary by Gessner G. Hauley and the words dangerous, hazardous, or toxic are used in the “Hazard” explanation used to categorize the substance; or
- (d) Substances listed in the latest edition of the Consolidated List of Chemicals Subject to the Emergency Planning and Community Right-To-Know Act (EPCRA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and Section 112(r) of the Clean Air Act by the United States Environmental Protection Act (EPA); or
- (e) Substances which must be removed, transported, or neutralized by the Response Team for the health, safety, or welfare of the citizens of the County or the waters, plants, or wildlife therein.

(B) Billing procedure; payment.

(1) Any person that uses, stores, handles, transports, or disposes of dangerous, hazardous, or toxic substances or materials or any substances or materials reasonably believed to be dangerous, hazardous, or toxic shall be liable to the County if such substances or materials are discharged or otherwise used in a manner necessitating a response by the Hazardous Materials Response Team. This includes responses to “hazardous materials emergencies” as defined under IC 13-11-2-97. Such liability shall be without regard to fault unless the fault is on the part of the County or the Hazardous Materials Response Team. The liability shall be in the amount of the reasonable and necessary costs and expenses incurred in connection with such response of the Hazardous Materials Response Team pursuant to the provisions of this section. If more than one person is liable under this section, the liability of such persons to the County shall be joint and several.

(2) The Coordinator of the Hazardous Material Response Team shall prepare and submit a billing to the responsible party for paying the costs and expenses identified in this section. The Coordinator shall submit the bill to the responsible party within thirty (30) days following any reimbursable responses of the Hazardous Materials Response Team. However, failure to submit the bill within 30 days does not relieve the responsible party of responsibility under this section.

(3) A person responsible for reimbursing the County under the provisions of this section shall tender payment in satisfaction of the aforementioned billing no later than thirty (30) days

following receipt of the billing prepared and issued by the Coordinator of the Tippecanoe Department of Emergency Management. Failure to tender full payment within thirty (30) days shall subject the responsible party to a penalty equivalent to five percent (5%) of the billed amount for each day the responsible party fails to tender full payment.

(4) If a person objects to the aforementioned billing by the Coordinator of the Department of Emergency Management, the responsible party must file with the County Board of Commissioners a written objection to the billed amount along with a tender of payment for those amounts not in dispute. Upon receipt of such written objection, the County Board of Commissioners shall place the matter on the agenda of its next regularly scheduled meeting and shall allow the responsible party an opportunity to object to the billing. The County Board of Commissioners shall then deliberate and issue a written opinion concerning the appropriateness of the billed amount. If the responsible party objects to the decision of the County Board of Commissioners, a petition requesting judicial review of the decision of the Tippecanoe County Board of Commissioners shall be filed with the Tippecanoe County Circuit Court no later than thirty (30) days from the date of the decision of the County Board of Commissioners. The County Circuit Court Judge shall conduct a hearing on the petition as expeditiously as is consistent with the Court's calendar. The decision of the Circuit Court Judge shall be final unless the responsible party or the County Board of Commissioners appeal that decision pursuant to the appellate procedure for appeal of any civil matter.

(C) Reimbursement cost. The responsible party shall reimburse the county for reasonable and necessary expenses incurred in the response including, without limitation:

(1) If the Tippecanoe County Hazardous Materials Response Team is called to the scene of an accident, the responsible party shall reimburse the county (at replacement cost) for any Hazardous Materials Response Team equipment or supplies which are damaged, lost, spent, destroyed, rendered irreparable, or "used up" in responding to or managing the incident.

(2) In addition to the reimbursement obligations contained in subdivision (1) above, the responsible party shall be billed by the Coordinator of the Department of Emergency Management at the rate of seventy dollars (\$70) per hour for each member, including members employed or supplied by other local agencies, of the Hazardous Materials Response Team who is active at the site.

(3) Costs for use of equipment that is not "used up" or otherwise reimbursable under subdivision (1) shall be reimbursable at the rates set forth in the most current Indiana Department of Homeland Security Notice 3 for initial response and hourly response costs.

(4) Reasonable costs for any reasonable and necessary expenses incurred that are not otherwise described by subdivisions (1) - (3).

(D) Out-of-county assessment. In the event that the Hazardous Materials Response Team responds to an incident outside of the boundaries of the county, the responsible party shall be billed the sum of \$2,000 per incident response. This charge shall be in addition to any and all charges for which the responsible party may be held liable under division (C) of this section. The provisions of division (B) of this section shall also be applicable to this out-of-county assessment.

This Ordinance shall be in full force and effect upon its passage and signing and publication as required by law.

Presented to the Board of Commissioners of Tippecanoe County, Indiana, and approved on first reading this 21st day of October, 2019, by the following vote:

BOARD OF COMMISSIONERS OF
TIPPECANOE COUNTY

VOTE

Y



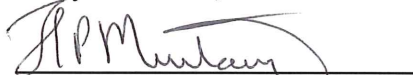
David S. Byers, President

Y



Tracy A. Brown, Vice President

Y



Thomas P. Murtaugh, Member

ATTEST:



Robert Plantenga, Auditor of Tippecanoe County

Presented to the Board of Commissioners of Tippecanoe County, Indiana, and approved on second reading this 4th day of November, 2019, by the following vote:

BOARD OF COMMISSIONERS OF
TIPPECANOE COUNTY

VOTE

Y



David S. Byers, President

Y



Tracy A. Brown, Vice President

Y



Thomas P. Murtaugh, Member

ATTEST:



Robert Plantenga, Auditor of Tippecanoe County